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File No. O Beggars 1941-1952

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A **BRANCH**

Subject:— Opinions under the Bombay Beggars Act 1945

R.L.A's Vol

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It is proposed to bring the Bombay Beggars Bill, when it is enacted, into force in the City of Bombay and Salsette in the first instance. A(H) 's minute at page 1 ante states that the commisioner of police has suggested that the application of the Act should be extended to Virar and Kalyan stations, that is to railway limits. It has also been proposed to open a Receiving Centre at Worli and to ask a Presidency Magistrate (Presumably a salaried Presidency Magistrate) to sit in the receiving centre at Worli to try Beggars' cases. The Home Department in paragraph 4 of its office note at page 2 ante states that in view of sections 3 and 4 (2) of the proposed Bombay Beggars Act, the Presidency Magistrate sitting at the Receiving Centre at Worli would be competent to try the cases of beggars arrested outside Greater Bombay, namely at Virar and Kalyan stations. The R.L.A. is requested to state whether the view taken by the Home Department is correct.

2. The view taken by the Home Department is not correct. Section 3 of the proposed Bombay Beggars Act provides that the powers conferred on Court by this Act shall be exercised only by the High Court, a Court of Session, a Salaried Presidency Magistrate, a Magistrate of the first class or a Juvenile Court and may be exercised by such courts whether the case comes before them originally or on appeal or revision. Section 4(2) requires the police officer or other person authorised in that behalf in accordance with rules made by the Provincial Government to arrest a person who is found begging to take or send the person so arrested to a court. "Court" would be the court having jurisdiction under the Code of Criminal

Procedure, 1898, to try the arrested person. The relevant provision in this connection is section 177 of the Code of Criminal Procedure, 1898. That section provides that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. This ordinary provision has been modified by section 3 of the proposed Beggars Act in that it has taken away the jurisdiction of second and Third Class Magistrates to try a case of begging. A begger therefore arrested at Kalyan or Virar will have to to be placed before the Frist Class Magistrate having jurisdiction at Virar or Kalyan Station or a Juvenile Court if there be one established for these places.

* Cf. section 29(1) of the Cr. P.C.

Id/- R.T.K.

For Remembrancer of Legal Affairs.

U.R. to H.D. No.666 , dated the 24th January 1946.

Office of the R.L.A.

Section 401(1) of the Code of Criminal Procedure, 1898, provides that when any person has been sentenced to punishment for an offence, theProvincial Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced. "Offence" as defined by section 4(1)(o) of the said Code means any act or ommission made punishable by any law forthe time being in force. It is true that begging would be an offence within themeaning of the said section 401 of the Code; but the scheme of the Bombay Beggars Act, 1945, is that if a person is declared a beggar under sub-section (4) ofsection 5 of that Act, he is ordered to be detained in a Certified Institution for a period of not less than one and not more than three years. This detention therefore does not amount to punishment after conviction and would not therefore be an offence within the meaning of section 4(1) (O) of the Criminal Procedure Code. Section 6 provides that whoever having been previously detained in a Certified Institution under the Beggars Act is found begging shall, on ~~conviction~~ conviction, be punished as provided in sub-sections (2) and (3) of that section. Thus, only when a person is convicted under section 6, he would be punished for the offence of begging within the meaning of the said section 4(1)(o) of the Code. It will thus be seen that no person who has not undergone detention for a period of at least one year in a Certified Institution and who has been convictedfor begging under section 6 can come

can come within the pruview of sub-section (1) of section 401 of the Criminal Procedure Code. In other words, only beggars convicted of under section 6 of the Beggars Act can be released under section 401(1). It would be open to Government in the case of such beggars to release them on the condition that they leave the Province. There would also be no legal objection to escorting them to the border of the Province inasmuch as such a condition can be imposed as one of the conditions of release.

2. If a beggar released as aforesaid re-enters the Province, he can be rearrested and made to undergo the unexpired portion of the sentence under sub-section (3) of section 401 of the Code since it would not be legally feasible to have recourse to the Beggars Act if he is not found begging.

o/c Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D., No. 1149-L , dated the 9th October 1946.

C G.R. 3-7

C 5

Office of the R.L.A.

The Bombay Beggars Act, 1945.

Whether the Beggars Home could be treated as prison within the meaning of section 10(1) of the Coroners Act, 1871.

It appears that the Coroner of Bombay considers that the certified institutions under the Bombay Beggars Act, 1945, are in the nature of a prison and has, therefore, issued instructions to the Superintendent, Female Beggars Home and Receiving Centre, Chembur, to report the death to him of the inmates thereof and to await his orders before the disposal of the dead body. The Chief Inspector of Certified Institutions, Poona, is of the view that the Beggars Home being used for dete detention of beggars is not a prison within the meaning of section 10(1) of the Coroners Act, 1871. The H.D., however, is of the view that, though in some respects the prisons differ from Certified Institutions, the aims and objects are more or less the same and, theorefore, the Beggars Home would be covered by section 10(1) of the Coroners Act. The R.L.A. is requested to advise whethert he view takenby H.D. is correct.

2. Section 10(1) of the Coroners Act, 1871, provides that when a person dies in a prison situated within the local limits of the Coroner's jurisdiction or whilst he is in the custody of the police, the Superintendent of the prisonor the police officer in

in charge of the section concerned, as the case may be, shall report the death to the Coroner and await his orders before the ody is disposed of. The "prison" has not been defined in the Act. The definition given in the Prisons Act, 1894, would be relevant only qua that Act, and cannot be imported into the Coroners Act, 1871. In 'Piter Maritez burg Corporation v. Natal Land and Colonization Company' (13 Appeal Case, APP. & CAS, 478) the follwoing rule of construction of statute is stated: -

> "In the construction of a statute the ordinary meaning of the words used must be adhered to unless that meaning is at variance with the intention of the Legislature to be collected from the statute itself or leads to some absurdity or repugnance."

"Prison" in its general sense may be said to include the various buildings whether designated as prisons, jails, penitentiaries, houses of correction, or otherwise, which are used for the confinment of persons in judicial custody, in civil or criminal proceedings, either as punishment or to insure their production in further proceedings (See Iyer's Law Lexicon). The main test for determining whether a place is a prison is that of restraint on liberty. "Every place where any person is restraint ~~xx~~ of ~~xx~~ his liberty is a prison" (Hobert and Strowd's Case, Cro. Car. 210). The Receiving Centres and Certified Institutions provided and maintained under section 10 ~~for~~ for the detention of beggars are intended for thier training for employment after the expiry of the period of detention. In other words these institutions are houses of correction where liberty is restrained and they are consequently prisons. This construction of section 10(1) of the Coroners Act promotes rather than hinders the aims and objects of the Act. It is true that section

It is true that section 24(2) of the Bombay Beggars Act appears to make a distinction betweent the detention in Certified Institutions and t detention ina jail. A jail would no doubt be a prison within the meaning of section 10(1) of the Coroners Act, but that would not exclude a Certified Institution from being a prison. In my opinion, there appears no objection to treating Receiving Centres and Certified Institutions provided and maintained under the Bombay Beggars Act as prisons within the meaning of section 10(1) of the Coroners Act, 1871.

o/c Sd/- P.M.L.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 320 dated the 10th January 1948.

C.G.R, 3-7

C 5

Office of the R.L.A.

Bombay Beggars Act, 1945.

Sections 5,6 & 9 and 26.

Indian Penal Code, 1860.

Sections 224, and 225-B.

Although beggars detained under section 5 of the Bombay Beggars Act, 1945, cannot be dealt with, in case of escape, under section 224, I.P.C. they can be proceeded against under section 225-B I.P.C. Beggars convicted under section 6 or 9 can be dealt with under section 224 and in any case under section 225-B I.P.C. In these circumstances it does not seem necessary to amend section 26 of the Bombay Beggars Act, 1945.

Sd/- P.M.L.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 6867 dated the 20th May 1950.

C.G.R. 3-7

C 5

Office of the R.L.A.

Extenment of Beggars. Bombay Beggars Act, 1945 Section 23(1) and Constitution of India. Act 15.

The question raised for the R.L.A's consideration is whther section 23(1) of the Bombay Beggars Act, 1945 (Bom.XXIII of 1945) is void and ultra vires the Constitution.

2. Section 23(1) of the Bombay Beggars Act, 1945, provides that if in the course of an inquiry made under sub-section (1) of section 5 it has appeared to the court that the person declared a beggar under sub-section (1) of section 5 is neither born nor domiciled in the Province of Bombay the Court after making such further inquiry, if any, as it deems necessary, may insteadof proceeding futher under section 5, by order in wirting direct the beggar to leave the province of Bombay within such time and by such route or routes as may be stated in the order and not to return thereto. This provision makes a discrimination against the beggars of other States in the Union on the ground of birth is prohibited by Article 15 (1) of the Constitution of India. Consequently, this provision in so far as it relates to discrimination on the ground of birth is ultra vires (Article 13(1) read with Article 15(1) of the Constitution). (See In Re Sheikh Hussein Sheikh Muhammad, 53 Bom. L.R.P. 57 where section 27(2) (a) of the City of Bombay Police Act, providing for discrimination against persons who have not been born in Greater Bombay was held to be repugnant to Article 15(1) of the Con-

of the Constitution) and void).

3. The Constitution recognizes merely the Indian domicile; it does not recognize any State domicile (See R.L.A.'s opinion No.6558, dated the 24th April 1951). Consequently, even discrimination on the ground of domicile in the Bombay State would be ultra vires.

4. The view taken by Secretary, Home Department, is, therefore, correct.

o/c Sd/-

Remembrancer of Legal Affairs.

R.O. to H.D. No. 10874 dated 10th July 1951.

C,G.R. 3-7

C 5

Legal Department.

The Presidency Magistrate, 11th Court, Bombay having on inquiry declared Pandit Sitaram Phadma, a beggar, under section 5 sub-section (4) of the Bombay Beggars Act (Bombay Act XXIII of 1945) and having found him under the provisions of section 25 sub-section (3) of the Act to be a lunatic was bound in accordance with clause (ii) of the said sub-section to direct that the said beggar's detention be undergone in an asylum established or licensed under section 84 of the Indian Lunacy Act, 1912, and which has been certified to be a certified institution under sub-section (1) of section 11 of the Bombay Beggars Act. It is presumed that the Central Mental Hospital at Yervada at which the said beggar was directed to be detained is such a certified institution. If so, the procedure followed by the Magistrate and the direction issued by him are in accordance with the provisions of the Bombay Beggars Act, 1945, and no illegality has been committed.

o/c Sd/-

Additional Secretary to Governmen

U.R. to H.D. No. 15655, dated the 3rd October 1951.

C.G.R. 3-7

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